

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.565/2014

Ku. Rashmi Jayant Nandedkar and anr. ..vs.. The State of Maharashtra
through Office incharge of Police Station, Akot and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. R. Deshpande, Advocate for applicants.
Mr. A. B. Moon, Advocate for non applicant no.2.

CORAM : V.M. DESHPANDE, J.

DATED : JUNE 30, 2017

Heard learned counsel for the parties.

An FIR was registered against the present applicants vide Crime No.3089/2012 for the offence punishable under Section 294, 504, 506 read with Section 34 of the Indian Penal Code on the complaint lodged by the present non applicant no.2. The Investigating Officer filed B-summary in the court of the learned Magistrate. The learned Magistrate issued notice to the non applicant no.2, who filed Protest Petition on 06.02.2013. The learned Magistrate, after hearing the complainant, passed the order on 17.04.2014 thereby issuing summons against the present applicants. The said order was challenged by the present applicant by filing Criminal Revision No.11/2014. The learned

Additional Sessions Judge, Akot dismissed the said revision.

The learned counsel for the applicants submitted that when the police officer filed B-summary, the learned Magistrate ought to have accepted the said and ought to have dropped the proceeding. He also submitted that even there is no sanction.

Merely because the police officer or investigating officer has filed B-summary, that by itself is not sufficient to pass the order of dropping the proceeding by the learned Magistrate. The duty is cast upon the learned Magistrate to see that a prima facie case is made out or not. In the present case, the learned Magistrate issued notice to the non applicant no.2 as to why B-summary submitted by the police officer should not be accepted. The complainant-non applicant has filed her Protest Petition and pointed out the discrepancy in the report and also pointed out the material available for consideration of the learned Magistrate. The learned Magistrate thereafter applied his mind and noticed that prima facie case is made out against the present applicants for issuance of process and therefore the order of issuance of process was passed.

When two set of facts are coming on record, it is for the Court/Magistrate to decide the case on its own merit. Merely because a police officer is filing B-summary that does not bar the learned Magistrate from taking the cognizance of the matter.

Insofar as the point of sanction is concerned, the learned counsel has candidly conceded that the said issue can be decided at any stage of the matter.

In view of above, I find no merit in the present application. The same is therefore dismissed.

JUDGE

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